

ATTACHMENT A



October 6, 2005

Gary Pieples
Legal Aid Society of Greater Cincinnati
215 East Ninth Street, Suite 200
Cincinnati, OH 45202

Dear Mr. Pieples:

Sierra Club would like to meet with you to discuss the progress of the SIB program, get your views on the program to date, and discuss solutions to ongoing problems so we can then prepare a report to the Court. To make the meeting more productive, this letter outlines the problems as we see them.

Lack of Responsiveness to Citizens

While MSD has provided a glowing report to the county commission on the SIB program, Sierra Club continues to receive calls, emails, and survey responses complaining about the program on a weekly basis. The complaints convey a lack of responsiveness from MSD. For example:

- The agency fails to call back and respond to SIB victims' concerns.
- Numerous citizens have reported repeated unanswered calls.
- Often, when citizens finally do get in touch with MSD, they are given inconsistent information.
- Many citizens are confused as to whether they are even enrolled in the prevention program.
- All SIB victims are not informed of the claims process.
- Ironically, in at least one instance an SIB problem was corrected by increased sewer capacity, yet MSD still wanted to install a pump.

SIB victims tell us that MSD does not care about their problems. From what we are told, this is conveyed to them by MSD in a variety of ways: 1) the confusing and excessively complex information given to them, including the release form; 2) the absence of a means for resolving disputes as to cause or claims payment; and 3) a failure to resolve claims, including requiring residents to do unnecessary work.

Financial Impact

Sierra Club also has concerns about the financial impact on SIB victims. Claim payments only cover the insurance deductible. There is the perception that filing a claim

also results in higher premiums and/or discontinued coverage – for incidents that are not the homeowner's fault.

Jurisdictional Issues

Residents are not informed when City, County or other government agencies need to be involved. They do not know who to call and follow up with to make sure their problems are resolved on issues including: 1) right-of-way responsibilities; 2) multiple causes; and 3) storm-water and sewage backups.

There is a lack of coordination between MSD departments. The City of Cincinnati's storm-water utility is part of MSD, yet we are told that when the MSD hears that water was "coming from a storm sewer," MSD says it isn't their problem. Even if a storm-water line drained City property, MSD treats the problem as if it were private property, rather than the City's problem.

Legal Rights

Citizens lack confidence on the legal front as well. There is a lot of confusion about which releases were invalidated by the court, and which were not. *Furthermore, the release form implies that the prevention program was created on MSD's own accord.* Nowhere in the document does it mention the attributes of the consent decree. The prevention program is *not* a goodwill gesture by MSD; it is each victim's *legal right*. Citizens have been told they are 'lucky' to be in this program.

Further, MSD's releases contain equivocal, complicated, and elusive terms. People are understandably confused about what rights they are giving away, are afraid to sign the documents, or are signing them because they feel they must in order to avoid suffering further backups. MSD should not be requiring the release of any rights for the installation of a pump in a trial program. A simple authorization or access agreement to do work should be adequate. Homeowners are also concerned about the long-term ownership and maintenance of the pump, after being told contradictory information. They are also concerned that they will not be able to sell their houses because the Covenant Agreement is now a part of the property deed.

SIB Prevention

The SIB Prevention Program is in need of improvement. MSD has not provided ratepayers, including renters, with easy-to-follow instructions on what to do when a backup occurs, or on how to prevent disease-causing contamination from sewage. Nor has MSD provided SIB victims with an easy-to-understand appeal system or the means of getting a second opinion if they question MSD's analysis of the cause(s) of the backup.

Tracking and Communication

MSD sometimes provides verbal reports to SIB victims, but should be providing written reports so that the SIB victims have something to refer to. This would explain exactly what MSD's view is on each problem. Currently there is no claims tracking process, nor is there a process for diminution of property value claims. SIB victims have no means of

tracking their claims to the city, and MSD has no systematic way of following up on claims that are filed but not responded to in 60 days. There has also been inconsistency or errors in MSD's database. For example, MSD reports no record of a call, yet we find a record of the call in our copy of their database.

Long-term Management Issues

In addition, Sierra Club has concerns about how MSD intends to continue to manage the Consent Decree:

- MSD has sent out an RFP for a consultant to manage the Decree and has recently begun contract negotiations for the management of the Decree. The Decree was meant to guide top management's work. How can management farm out its key legal responsibility? This will lead to a lack of accountability. Who goes to jail for contempt, the contractor?
- MSD has made no provisions to inform people that homes can and have been purchased by MSD and what the criteria are.
- No analysis has been done to ensure that MSD's pump solution will not simply move the problem next door.
- There is no intent on MSD's part to increase capacity of sewer lines, remove storm-water, or provide preventive maintenance to prevent backups.
- MSD intends to turn over pumps to citizens with a ten-year guarantee, after which ratepayers have no further remedy for failures.
- MSD is not addressing capacity to prevent SIB as a long term SIB strategy in the Long Term Control Plan.
- MSD is not addressing capacity increases in its Capital Improvement Plan (CIP).

Weakening Standards

MSD has also been participating in efforts, along with other waste water treatment plants, to get ORSANCO to lower water quality standards. Minutes of meetings show that MSD expects the standards to be changed by July 2006 in time for the LTCP. That means fewer, poorer projects.

There is a conflict between HB 411, MSD regulations and the Consent Decree for long-term correction of the problem, i.e., pump ownership and maintenance. These issues have yet to be brought before the commissioners.

SIB Program Costs and Progress

The cost of the SIB program may make its full implementation difficult. Indications continue to be that MSD is paying a fairly high cost (costs for pumps, contractors, engineering) per SIB household for the program.

SIB follow-up is difficult because the program employs private contractors. There are questions about the progress of the SIB program:

- MSD has not updated its WIB statistics online since December 2004.
- Is MSD on schedule with their plans to install pumps?
- How many SIB victims have refused pumps?
- What is their recourse if they don't want the MSD design?

Ombudsman and Complaint Resolution

Many residents remain unaware that there is an "Ombudsman." Prevention plans go uncompleted for long periods of time. Victims are being given the run-around by MSD, necessitating our follow-up to the Ombudsman and to MSD and then back to the complainant. In some cases, this has become a continuous cycle, generated by MSD's failure to correct problems, call residents back and work with them. Furthermore, MSD has no outreach to non-English speaking SIB victims.

Sierra Club urges increased notification as a means to solve some of these problems, by means of a web site, community press, and news articles. The Ombudsman can contract with an investigator to track SIBs and establish response criteria. Additionally, an outreach coordinator should follow up with residents to survey resident's satisfaction, and look for potential issues. MSD should also provide access to GIS (computerized geographic mapping of sewer lines, manholes, storm sewers) to assist in the Ombudsman and the Sierra Club's understanding of actual sewer lines. At this point, we believe a systematic audit of the SIB program is in order. While some SIB victims are satisfied, others are not and may not know where to turn for assistance.

Sierra Club's Commitment

Since the Decree was signed, Sierra Club has waged an educational campaign about the Decree, including the potential impact of lowered water quality standards and health impacts. Additionally, Sierra Club has: prepared and distributed a video; monitored the progress of the decree; conducted outreach directly to SIB victims; surveyed and met with participants; and helped them analyze their problem and network with the Ombudsman and local government. Sierra Club has helped to prepare a report for the Ombudsman, monitored MSD's appearances before the Hamilton County Commission, reviewed various MSD projects, conducted water quality testing for e. coli, reviewed public files at Ohio EPA and MSD, begun outreach to the Hispanic population on the SIB program, participated in the Long Term Control Plan Steering Committee, and gotten MSD to expand their meetings in order to provide participants more information and give them time to ask questions. In other words, we have identified problems with the program and promoted solutions. We now need to develop a plan to jointly correct these long-existing deficiencies in the program. It is time for a unified report to Judge Spiegel.

Sincerely,

Marilyn Wall

Marilyn Wall
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cc: Altman, Asbury, Robertson